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No. 91-1804

In The

Supreme Court of the United States

October Term, 1992

JOSE ELIGIO VELEZ and ELBA ZAYAS,

Petitioners,

vs.

LYDIA FELIX DE SANTANA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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(6)

QUESTIONS PRESENTED

1. Are private persons, sued for damages under 42 U.S.C. § 1983 for allegedly conspiring with a state official to violate constitutional rights, entitled to assert a qualified immunity defense?

2. This Honorable Court in having decided in *Wyatt v. Cole*, 60 L.W. 4283 on May 18, 1992 that private persons are not entitled to assert the qualified immunity defense, should this Honorable Court again review what so recently has been answered in the negative?

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Case Cited:

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OPINIONS BELOW

The opinions of the district court and the First Circuit Court of Appeals are contained in petitioners' Appendix.

STATEMENT OF JURISDICTION

Respondent does not question the jurisdiction of this Honorable Court.

STATEMENT OF THE CASE

Respondent is generally in agreement with the statement of the case presented by petitioners in their petition for writ of certiorari.

REASONS FOR DENYING THE WRIT

I.

THIS PETITION FOR WRIT OF CERTIORARI RAISES THE SAME QUALIFIED IMMUNITY/PRIVATE PERSON ENTITLEMENT WHICH THIS HONORABLE COURT DECIDED CONTRARY TO THE POSITION OF PETITIONERS IN *WYATT V. COLE*, 60 L.W. 4383, DECIDED MAY 18, 1992 AND THEREFORE CERTIORARI IS CLEARLY UNWARRANTED.

One would have expected that after the decision of this Honorable Court in *Wyatt v. Cole* decided less than two months ago, petitioners would have withdrawn their petition for certiorari as their argument for granting the writ was squarely based on the granting of certiorari in *Wyatt v. Cole* precisely to determine the present question. As this Honorable Court has settled the question in the negative, that is, that a private person cannot take advantage of the qualified immunity defense and that the latter is reserved to public officials for the reasons stated in the opinion it would be a waste of this Honorable Court's time to enter into a discussion of the arguments of why a writ of certiorari should not be granted.

We have nothing to add to the majority view in favor of denying qualified immunity to private persons in the context of Section 1983, Title U.S.C., tort actions. The opinion of this Honorable Court in *Wyatt v. Cole*, 60 L.W. 4383 is in accord with the line of cases which the First Circuit Court of Appeals had decided denying private persons the privilege of qualified immunity. There is nothing new in petitioner's request, which was not covered by this Court's decision in *Wyatt v. Cole.*

As the conflict among the different circuits has been resolved by the latter opinion, there is nothing to sustain petitioner's request for certiorari under Rule 10 of the Supreme Court of the United States.

CONCLUSION

It is respectfully requested that the petition for writ of certiorari be denied.

Respectfully submitted,

A. J. AMADEO MURGA
Attorney for Respondent